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EXAMINER

PRONE, JASON D

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SHARIDAN LORRAINE STILES

Appeal 2009-002758
Application 10/648,686
Technology Center 3700

Decided: February 25, 2010

Before: JENNIFER D. BAHR, LINDA E. HORNER, and MICHAEL W.
O'NEILL, *Administrative Patent Judges.*

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Sharidan Lorraine Stiles (Appellant) appeals under 35 U.S.C. § 134 (2002) from the Examiner's decision rejecting claims 1-8, 10-12, 15, 21-24, 27, 28, and 33-40, which are the only claims pending in the application. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

The Invention

Appellant's claimed invention is directed to personal shaving razors for grooming in fine detail. Spec. 1, para. 2.

Claims 1¹ and 10, reproduced below, are illustrative of the claimed subject matter.

1. A personal styling razor, comprising:

a handle portion having lower, middle and upper longitudinal portions; and

a head portion, having a razor blade with a straight cutting edge, attached to said upper longitudinal portion wherein said head portion and said razor blade are configured to permit shaving hair;

wherein said cutting edge of said razor blade is substantially perpendicular to a longitudinal axis of the handle;

wherein said lower longitudinal portion extends along a first axis, said middle longitudinal portion extends along a second axis and said upper longitudinal portion extends along a third axis;

¹ Independent claim 4 differs from claim 1 in that claim 4 requires a fixed extension angle of greater than ninety degrees.

wherein said second and third axes intersect at a single point and form a fixed extension angle that is less than or equal to ninety degrees;

wherein said extension angle is defined by a portion of said second axis starting from the intersection of said second and third axes and extending toward the intersection of the first and second axes, and a portion of said third axis starting from the intersection of said second and third axes and extending toward the razor head, wherein the extension angle faces the front of the razor;

wherein said first and said second axes intersect at a single point and form a fixed contour angle that is less than 180 degrees;

wherein said contour angle is defined by a portion of said first axis starting from the intersection of said first and second axes and extending toward the end of said razor handle portion located on said lower handle portion, and a portion of said second axis starting from the intersection of said first and second axes and extending toward the intersection of said second and third axes, wherein the contour angle faces the front of the razor; and

wherein said head portion has a width of less than or equal to one inch.

10. A detail shaving razor, comprising:

an ergonomically shaped handle portion;
and

a head portion attached to said handle portion and formed with at least one razor blade having a straight cutting edge wherein said head portion and said razor blade are configured to permit shaving hair;

wherein said head portion is less than or equal to 1/2 inch wide;

wherein said cutting edge of said razor blade is substantially perpendicular to a longitudinal axis of the handle;

wherein said handle portion is adapted to provide increased control over the head portion during shaving;

wherein said handle portion further comprises a front or rear perspective that is substantially hour-glass in shape, having:

a lower longitudinal portion of a first curved shape; and

a middle longitudinal portion of a second curved shape attached lengthwise to said first lower longitudinal portion;

wherein a waist portion is formed between said first curved shape and said second curved shape.

The Rejections

The Examiner relies upon the following as evidence of unpatentability:

Heinrich	US 2,139,680	Dec. 13, 1938
Lamb	US Des. 169,147	Mar. 31, 1953
Hollinger	US Des. 259,743	Jun. 30, 1981
Smith	US 4,335,509	Jun. 22, 1982
Carreker	US 4,461,078	Jul. 24, 1984
Heller	US 4,700,477	Oct. 20, 1987
Lazarchik	US 4,785,534	Nov. 22, 1988

The following rejections under 35 U.S.C. § 103(a) are before us for review:

- (1) The Examiner rejected claims 1, 2, 4, 5, 7, 8, 21, 22, 27, 28, 33, 35, and 37-39 as being unpatentable over Hollinger and Heller.
- (2) The Examiner rejected claims 3, 6, 34, and 36 as being unpatentable over Hollinger, Heller, and Lazarchik.
- (3) The Examiner rejected claims 10, 23, and 24 as being unpatentable over Heller and Lamb.
- (4) The Examiner rejected claims 11 and 12 as being unpatentable over Heller, Lamb, and Heinrich.
- (5) The Examiner rejected claim 15 as being unpatentable over Heller, Lamb, and Carreker.
- (6) The Examiner rejected claims 10 and 40 as being unpatentable over Hollinger, Heller, and Smith.

SUMMARY OF DECISION

We AFFIRM-IN-PART.

OPINION

Rejection (1)

Claims 1, 4, 5, 8, 21, 27, 28, 35, and 37

Issues

In light of the contentions of the Examiner and Appellant (*see* Ans. 4-7; App. Br. 7-12; Reply Br. 4), the issues presented for our consideration are as follows:

1. Does Hollinger's razor comprise a handle portion satisfying the lower, middle, and upper longitudinal portions extending along a first axis, a second axis, and a third axis, respectively, with the fixed extension

angle defined between the second and third axes and the fixed contour angle defined between the first and second axes called for in claims 1 and 4?

2. Does Heller teach away from modification of Hollinger to provide a head width as taught by Heller?

Findings

The lower, middle, and upper (top) longitudinal portions 32, 34, 36 of Appellant's handle, along with first, second, and third longitudinal axes 33, 35, and 37, contour angle C, and extension angle B, are depicted in Figure 6A. *See Spec.*, paras. 28-30.

Appellant's Figure 6A is reproduced below:

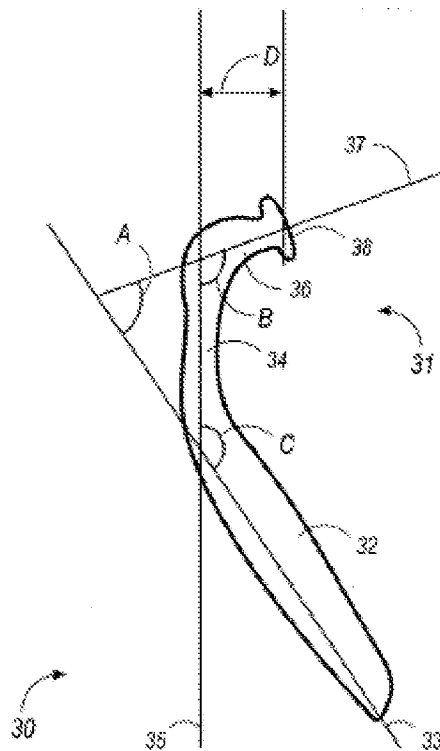


FIG. 6A

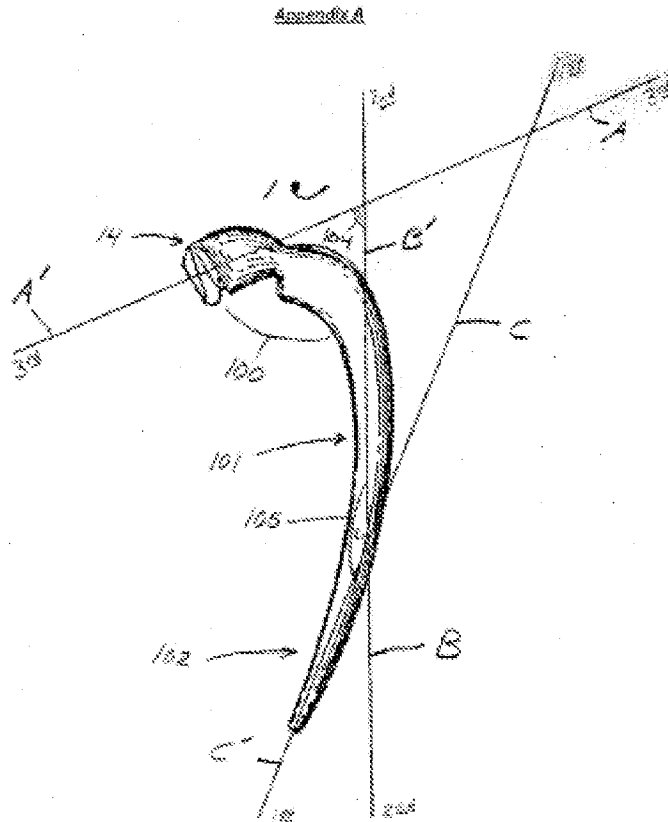
Figure 6A is said to be a side view of one embodiment of Appellant's razor. Spec., para. 16.

Appellant's Figure 6A depicts an arcuate one-piece handle which curves gently from a distal, lower end toward the top portion 36, where it curves much more sharply toward the head 38. The first two longitudinal axes 33 and 35 (said to define the axes along which the lower portion 32 and middle portion 34 extend) are drawn through the gently curved section so as to intersect to define a contour angle C therebetween. The third longitudinal axis 37 extends through the top portion 36 and intersects second axis 35 to define an extension angle B with the axis 35. Extension angle B is depicted in Figure 6A to be greater than 90 degrees, and contour angle C is depicted in Figure 6A to be less than 180 degrees. As depicted in Figure 6A, Appellant's handle is contoured, and the contour is not parallel to any of the axes in any of the lower, middle, and top portions. The depicted longitudinal axes do not bisect the lower, middle, and upper portions, respectively.

Appellant discloses that the contour angle C may vary, and that any angle between 0 and 180 degrees may be utilized for the extension angle B. Spec., paras. 28 and 29.

The Examiner has annotated Figure 1 of Hollinger to illustrate how Hollinger's handle comprises lower, middle, and upper portions extending along first, second, and third longitudinal axes as called for in claim 1. The annotated Figure 1 is included as "Appendix A" (hereinafter "Appendix A") on page 15 of the Examiner's Answer.

Appendix A of the Examiner's Answer is reproduced below:

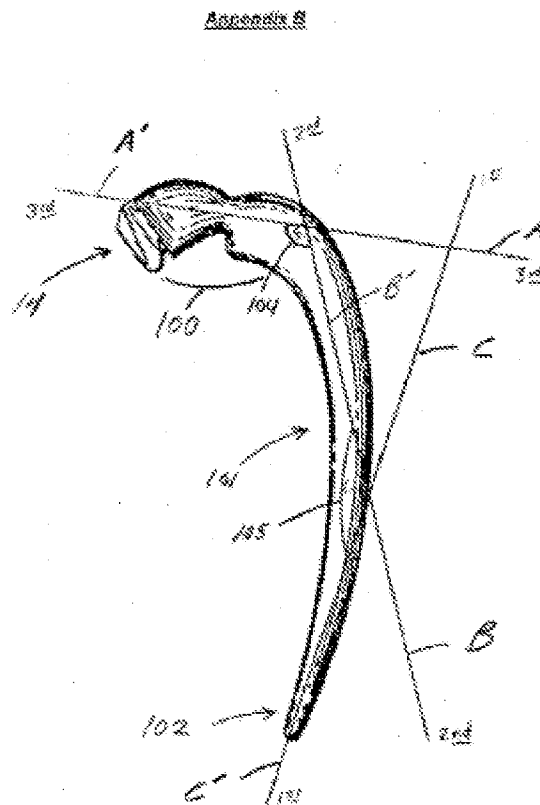


The Examiner's Appendix A depicts Figure 1 of Hollinger (a front elevational view of the razor), with annotations said to show a lower portion 102, a middle portion 101, and an upper portion 100, as well as first, second, and third longitudinal axes C, B, and A, respectively. Appendix A depicts an arcuate one-piece handle which curves gently from a distal, lower end toward the upper portion 100, where it curves much more sharply toward the head 14. The first two longitudinal axes C and B (said to define the axes along which the lower portion 102 and middle portion 101 extend) are drawn through the gently curved section so as to intersect to define a contour angle 105 therebetween. The third longitudinal axis A extends through the upper portion and intersects second axis B to define an extension angle 104 with the axis B. Extension angle 104 is depicted in Appendix A to be less

than 90 degrees, and contour angle 105 is depicted in Appendix A to be less than 180 degrees. As depicted in Appendix A, the handle is contoured, and the contour is not parallel to any of the axes in any of the lower, middle, and upper portions. The depicted longitudinal axes do not bisect the lower, middle, and upper portions, respectively.

The Examiner has annotated Figure 1 of Hollinger to illustrate how Hollinger's handle comprises lower, middle, and upper portions extending along first, second, and third longitudinal axes as called for in claim 4. The annotated Figure 1 is included as "Appendix B" (hereinafter "Appendix B") on page 16 of the Examiner's Answer.

Appendix B of the Examiner's Answer is reproduced below:

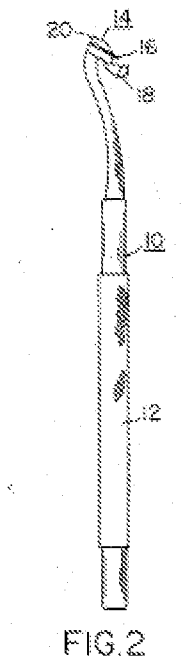


The Examiner's Appendix B depicts Figure 1 of Hollinger (a front elevational view of the razor), with annotations said to show a lower portion 102, a middle portion 101, and an upper portion 100, as well as first, second, and third longitudinal axes C, B, and A, respectively. Appendix B depicts an arcuate one-piece handle which curves gently from a distal, lower end toward the upper portion 100, where it curves much more sharply toward the head 14. The first two longitudinal axes C and B (said to define the axes along with the lower portion 102 and middle portion 101 extend) are drawn through the gently curved section so as to intersect to define a contour angle 105 therebetween. The third longitudinal axis A extends through the upper portion and intersects second axis B to define an extension angle 104 with the axis B. Extension angle 104 is depicted in Appendix B to be greater than 90 degrees, and contour angle 105 is depicted in Appendix A to be less than 180 degrees. As depicted in Appendix B, the handle is contoured, and the contour is not parallel to any of the axes in any of the lower, middle, and upper portions. The depicted longitudinal axes do not bisect the lower, middle, and upper portions, respectively.

Heller describes an eyebrow trimmer or shaper mounted on a handle 10 having "a textured area 12 for easy gripping and manipulation of the device." Col. 2, ll. 16-19. Heller discloses a head consisting essentially of a blade 16, a front razor head guard 18, and a back razor head and safety guard 20, and teaches that a razor blade width of "approximately 3/16" to 1/4"" with rounded corners is desirable. Col. 2, ll. 22-30.

Heller teaches that the eyebrow trimmer "is mounted at a comfortable operating angle on a handle having a textured grip for easy holding and manipulation of the eyebrow trimmer." Abstract.

Heller's Figure 2 is reproduced below:



Heller's Figure 2 is said to be a side elevational view of the eyebrow trimmer. Heller, col. 1, ll. 66-68.

As depicted in Figure 2, Heller's razor blade is directed downwardly, at an angle of less than 90 degrees relative to the handle. Heller does not specify that the particular angle depicted is critical, or disparage other mounting arrangements of an eyebrow trimmer on a handle.

Analysis

Appellant does not present any separate arguments for claims 5, 8, 21, 27, 28, 35, and 37. Thus, in accordance with 37 C.F.R. § 41.37(c)(1)(vii) (2009), these claims stand or fall with the one of claims 1 and 4 from which they depend.

Based on our findings above, the handle of Hollinger satisfies both the limitations of a lower, middle, and upper portion called for in claim 1 and those called for in claim 4. The fact that Hollinger's handle is a continuous

curved element does not detract from the Examiner's reliance on various portions of it as corresponding to the lower, middle, and upper portions called for in the claims. As shown in our findings above, the similarity between Hollinger's handle and that of Appellant is striking, and the demarcated lower, middle, and upper portions of Hollinger's handle extend along the three demarcated axes in both Appendices A and B in much the same manner as Appellant's lower, middle, and upper portions. As such, the Examiner's parsing of Hollinger's handle into three portions and definition of three longitudinal axes along which those portions extend are no more arbitrary than those described by Appellant in Figure 6A.

“[W]hen the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.” *KSR Int'l. Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007) (citing *United States v. Adams*, 383 U.S. 39, 51-52 (1966)). “A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be led in a direction divergent from the path that was taken by the applicant.” *In re Haruna*, 249 F.3d 1327, 1335 (Fed. Cir. 2001) (citation omitted).

As noted in our findings above, while Heller teaches that the eyebrow trimmer is mounted at a comfortable angle on the handle for easy holding and manipulation, Heller does not characterize the particular angle depicted as critical or disparage other possible mounting arrangements of an eyebrow trimmer on a handle. Simply that the particular mounting angle shown by Heller differs from the angle of the razor blade to the handle in Hollinger is not sufficient to establish that Heller teaches away from the use of a trimming head on Hollinger having a width as taught by Heller. *See In re*

Beattie, 974 F.2d 1309, 1312-13 (Fed. Cir. 1992) (simply that there are differences between two references is insufficient to establish that such references teach away from any combination thereof).

Conclusions

1. Hollinger's razor comprises a handle portion satisfying the lower, middle, and upper longitudinal portions extending along a first axis, a second axis, and a third axis, respectively, with the fixed extension angle defined between the second and third axes and the fixed contour angle defined between the first and second axes called for in claims 1 and 4.
2. Heller does not teach away from modification of Hollinger to provide a head width as taught by Heller.

Claims 2 and 33

Issue

The issue presented is whether the Examiner erred in finding that Hollinger's head is "disposable," as required in claims 2 and 33. The Examiner construes the term "disposable" as capable of being "thrown away or gotten rid of." Ans. 20. Appellant's argument that Hollinger's head is not "disposable" is premised on Appellant's contention that the Specification, in paragraph 20, sets forth a definition of "disposable" as "interchangeably mounted." *See* App. Br. 13-14; Reply Br. 5.

Discussion

We do not find a definition of "disposable" as "interchangeably mounted" in paragraph 20 of Appellant's Specification. In paragraph 20, Appellant's Specification discloses that in certain embodiments the heads are "in a disposable form." Paragraph 20 of the Specification further

discloses that the shaving heads “can be interchangeably mounted on the same handle in some embodiments.” In other words, the feature of interchangeably mounting appears to be another characteristic of some embodiments of the heads, not a definition of “disposable.”

When claim terminology is construed in the United States Patent and Trademark Office, claims are to be given their broadest reasonable interpretation consistent with the specification, reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

We find that the Examiner’s construction of “disposable” as having the capability to be thrown away or gotten rid of is consistent with Appellant’s use of the term “disposable” in the Specification. *See* Spec. 3-4, para. 21 (stating “[t]he disposable razor may be thrown away when the blade has become too dull for effective shaving”). Further, we find that an ordinary and customary definition of “disposable” is “that can be thrown away after use.” *Webster’s New World Dictionary* 406 (David B. Guralnik ed., 2nd Coll. Ed., Simon & Schuster, Inc. 1984). The Examiner’s construction is also consistent with this ordinary and customary use of the term “disposable.”

Conclusion

For the above reasons, we are not persuaded that the Examiner erred in finding that Hollinger’s head is “disposable.”

Claim 7

Issue

Appellant argues that Hollinger's handle does not comprise first and second curved shapes, because Hollinger's handle is a single curved shape. App. Br. 15. Accordingly, the issue presented is whether the portions of Hollinger's handle designated as lower portion 102 and middle portion 105, respectively, in Appendix A of the Examiner's Answer, comprise first and second curved shapes, respectively, as called for in claim 7.

Discussion

Notably, claim 7 does not exclude first and second curved shapes that together form a continuous curved shape. As is apparent in Appellant's Figure 6A, reproduced above, the lower portion 32 and middle portion 34 of Appellant's handle form a single curved shape. Thus, claim 7 cannot be construed, consistent with Appellant's Specification, as excluding such a configuration.

Like the lower portion 32 and middle portion 34 of Appellant's handle, the lower portion 102 and middle portion 101 of Hollinger's handle, as depicted in Appendix A, reproduced above, together do form a continuous, gently curved portion of the handle. Each of them, however, like Appellant's lower portion 32 and middle portion 34, is also a curved shape.

Conclusion

For the above reasons, we are not persuaded the Examiner erred in finding that the portions of Hollinger's handle designated as lower portion 102 and middle portion 101, respectively, in Appendix A of the Examiner's

Answer, comprise first and second curved shapes, respectively, so as to satisfy the limitations of claim 7.

Claims 38 and 39

Issue

Claims 38 and 39 require that no portion of the razor head extend beyond the cutting edge of the blade. The Examiner, implicitly conceding that Hollinger does not explicitly describe that limitation, found that such an arrangement is inherent, as otherwise the blade could not cut. Ans. 4. Accordingly, the issue presented is whether the record supports the Examiner's finding that inherently no portion of Hollinger's head extends beyond the cutting edge of the blade.

Discussion

"Under the principles of inherency, if the prior art necessarily functions in accordance with, or includes, the claimed limitations, it anticipates." *In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1349 (Fed. Cir. 2002) (citations and internal quotation marks omitted). "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (citations and internal quotation marks omitted).

Once the PTO establishes a prima facie case of anticipation based on inherency, the burden shifts to appellant to prove that the prior art does not possess the characteristic at issue. *See In re King*, 801 F.2d 1324, 1327 (Fed. Cir. 1986). This is the case whether the rejection is based on inherency under 35 U.S.C. § 102, prima facie obviousness under 35 U.S.C. §

103, or both jointly or alternatively. *See In re Best*, 562 F.2d 1252, 1255 (CCPA 1977).

In this case, even assuming that the Examiner articulated sufficient technical reasoning to shift the burden to Appellant to show that Hollinger does not inherently possess the feature at issue, Appellant presents Figure 2 of US Patent 4,785,534, depicting a portion of the head extending beyond the cutting edges of the blades, as evidence that razor head arrangements were known at the time of Appellant's invention in which portions of the razor head extend beyond the cutting edge of the blade. *See App. Br. 17*. The Examiner does not dispute either the authenticity of the reproduced Figure 2 of US Patent 4,785,534 or Appellant's representation of what that drawing figure shows. Rather, the Examiner simply counters that the razor described in US Patent 4,785,534 is more complex than that of Hollinger. Ans. 21. The Examiner then points to the Carreker patent as purportedly showing that "it is normal for blades to extend past the razor head." *Id.* At best, Carreker shows that razor head arrangements wherein the razor blade extends outwardly beyond the razor head were known at the time of Appellant's invention. In other words, while the Examiner may have shown that the claimed arrangement is possible in Hollinger's razor, the Examiner has not shown that Hollinger's razor *necessarily* possesses the feature that no portion of the head extends beyond the cutting edge of the blade. We are mindful that the Examiner's rejection is based on a finding that Hollinger inherently possesses this feature, not a conclusion that this feature would have been obvious to include in Hollinger.

Conclusion

The record does not support the Examiner's finding that inherently no portion of Hollinger's head extends beyond the cutting edge of the blade. We reverse the rejection.

Claims 22 and 28

Issue

Based on the contentions of Appellant and the Examiner (*see* App. Br. 18-19; Ans. 21-22), the issue presented is:

On the basis of the record before us, does the recitation of a blade width of 1/8 inch or less patentably distinguish the subject matter of claims 22 and 28 over the Hollinger razor modified so as to include a razor head sized for trimming, as taught by Heller?

Analysis

In cases in which the difference between the claimed invention and the prior art is some range or other variable within the claims, it has consistently been held that "the applicant must show that the particular range is *critical*, generally by showing that the claimed range achieves unexpected results relative to the prior art range." *In re Woodruff*, 919 F.2d 1575, 1578 (Fed. Cir. 1990).

As noted in our findings above, Heller evidences that blades having a width as small as "approximately" 3/16 inch were known in the art at the time of Appellant's invention for trimming hair in smaller areas, such as eyebrows. A person of ordinary skill in the art, being "also a person of ordinary creativity, not an automaton," *KSR*, 550 U.S. 398 at 421, could have predicted that smaller blade widths permit more detailed and fine trimming in areas less accessible to larger blades. Thus, the advantages

cited by Appellant for the claimed blade width of 1/8 inch are predictable and expected.

Conclusion

On the basis of the record before us, the recitation of a blade width of 1/8 inch or less does not patentably distinguish the subject matter of claims 22 and 28 over the Hollinger razor modified so as to include a razor head sized for trimming, as taught by Heller.

Rejection (2)

In contesting this rejection, Appellant simply relies on the arguments asserted against the rejection of independent claims 1 and 4 based on Hollinger and Heller. *See* App. Br. 7. These arguments are unpersuasive for the reasons discussed above.

Rejection (3)

Claims 10 and 23

Issue

In rejecting claim 10, the Examiner acknowledges that Heller lacks an ergonomically shaped handle having a front or rear perspective that is substantially hour-glass in shape. Ans. 9. The Examiner found that Lamb teaches that razor handles having an ergonomic, substantially hour-glass shape were well known in the art at the time of Appellant's invention. Ans. 9. The Examiner then concluded that it would have been obvious to provide Heller's razor with an ergonomically shaped handle as taught by Lamb, because the modification is merely the substitution of one known element for another, yielding predictable results. *Id.*

Appellant does not dispute the Examiner's finding that Lamb teaches an ergonomic, substantially hour-glass shaped handle. Rather, Appellant

argues that providing a large bulbous handle, as taught by Lamb, on Heller's eyebrow trimmer would render Heller's trimmer inoperable for its intended purpose, because the user could not accurately trim eyebrows. App. Br. 20. Appellant reasons that because Heller has identified prior art standard safety razors as inadequate, one of ordinary skill in the art would not look to them for handle details. App. Br. 20. Appellant additionally argues that the Examiner is taking inconsistent positions with respect to the structure in Heller that corresponds to the "handle portion" in claim 10. App. Br. 20-21.

Accordingly, the issue presented is whether the combined teachings of Heller and Lamb render obvious the provision of a substantially hour-glass shaped handle, as taught by Lamb, on Heller's eyebrow trimmer.

Discussion

Appellant does not present any separate argument for claim 23. Thus, in accordance with 37 C.F.R. § 41.37(c)(1)(vii) (2009), claim 23 stands or falls with claim 10.

We find that Heller discloses that a man's safety razor is inadequate for use by women in shaping and trimming their eyebrows because the blade is too large and is not protected by suitable guards at the edges of the blades to prevent nicking and cutting the skin in the area of the eyebrows. Col. 1, ll. 19-40. Heller does not allude to any disadvantages in the handles on such razors. While Heller depicts a generally cylindrical textured handle portion 12 (*see* Figs. 1 and 2), Heller does not disparage the use of other handle configurations adapted to facilitate gripping and manipulation. Heller focuses on the size of the blade, not the handle, as the inadequacy in the use of the standard man's safety razor in shaving or trimming eyebrows. As such, Heller does not support Appellant's argument that provision of a

handle as taught by Lamb for use with the eyebrow trimmer of Heller would render Heller's eyebrow trimmer inoperable for its intended purpose.

As for Appellant's contention that the Examiner has taken inconsistent positions with respect to which portions of Heller correspond to the "handle portion," the Examiner explains that while the reference number 10 generally designates the "handle" in Heller, it is the textured gripping area 12 of the handle 10 that the Examiner proposes to replace with an ergonomically hour-glass shaped handle element as taught by Lamb. Ans. 22. Accordingly, Appellant's contention does not appear to highlight an error in the Examiner's rejection.

Conclusion

For the above reasons, we are not persuaded that the Examiner erred in concluding that the combined teachings of Heller and Lamb render obvious the provision of a substantially hour-glass shaped handle, as taught by Lamb, on Heller's eyebrow trimmer.

Claim 24

Claim 24 requires that the head portion be equal to or less than 1/8 inch wide. The contentions of the Examiner and Appellant with respect to this limitation are essentially the same as those asserted with respect to the same limitation in claims 22 and 28. *See* Ans. 13-14; App. Br. 25. Accordingly, the issue presented is whether, on the basis of the record before us, the recitation of a blade width of 1/8 inch or less patentably distinguishes the subject matter of claims 22 and 28 over the Hollinger razor modified so as to include a razor head sized for trimming, as taught by Heller. For the reasons set forth above in our discussion of claims 22 and 28, we are not persuaded that it does.

Rejection (4)

Claim 11

The issue presented is whether the Examiner erred in construing the claim term “disposable” as capable of being disposed of. *See* Ans. 22-23; App. Br. 22. For the reasons discussed above with respect to this same limitation in claims 2 and 33, we conclude that the Examiner did not err in so construing the term “disposable.”

Claim 12

Issue

In light of the contentions of the Examiner and Appellant (*see* Ans. 23; App. Br. 24), the issue presented is:

Does Heinrich teach a head portion “pivotally mounted” on the handle portion? In particular, is a head that is threadedly connected to a handle “pivotally mounted” on the handle? This issue turns on the broadest reasonable interpretation of “pivotally mounted.”

Discussion

As noted above, when claim terminology is construed in the United States Patent and Trademark Office, claims are to be given their broadest reasonable interpretation consistent with the specification, reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *Am. Acad.*, 367 F.3d at 1364.

We find that Appellant’s Specification discloses that in some embodiments, the head “is mounted via a pivoting joint (not shown) such that the angle of the shaving head 38 can vary with respect to the rest of the razor.” Spec. 7-8, para. 30. We further find that the plain meaning of the terminology “pivotally mounted” suggests a state of being mounted in a

pivotal manner, that is, so as to be capable of pivotal movement. Consistent with Appellant's Specification and with the plain meaning of the terminology "pivotally connected," we construe this terminology as meaning mounted so as to be capable of pivotal movement.

We find that in the mounting arrangement taught by Heinrich, the head is mounted on the handle by threading the stud 12 securely onto the threaded stem 13. Heinrich, p. 1, col. 1, ll. 45-49; Fig. 2. In such mounted state, it is not capable of pivotal movement. Otherwise, it would not operate properly and safely. Accordingly, we find that a razor head mounted on a handle via a threaded stem as taught by Heinrich is not "pivotally mounted" on the handle.

Conclusion

Heinrich does not teach a head portion "pivotally mounted" on the handle portion. Thus, the Examiner has not established that the combination of Heller, Lamb, and Heinrich renders obvious a razor head "pivotally mounted" on the handle. We reverse the rejection.

Rejection (5)

Appellant argues the rejection of claim 15 as being unpatentable over Heller, Lamb, and Carreker along with the rejection of claim 10 as being unpatentable over Heller and Lamb. *See* App. Br. 19. Appellant does not assert any separate arguments for the patentability of claim 15 other than those directed to claim 10. For the reasons discussed above with respect to the rejection of claim 10, those arguments do not convince us that the Examiner's rejection of claim 15 should be reversed.

Rejection (6)

Issue

The issue presented is whether the teachings of Hollinger, Heller, and Smith, combined as proposed by the Examiner, render obvious a substantially hour-glass shaped handle portion having a lower longitudinal portion of a first curved shape and a middle longitudinal portion of a second curved shape attached lengthwise to the lower longitudinal portion, as called for in claim 10. *See* App. Br. 27-28; Ans. 12-13.

Discussion

The Examiner found that Hollinger lacks a substantially hour-glass shaped handle portion. Ans. 12. The Examiner found that Smith teaches a substantially hour-glass shaped handle portion having a waist between a lower portion and a middle portion, and concluded that it would have been obvious to provide such a handle portion on Hollinger's razor. Ans. 13. In attacking the combined teachings of Hollinger and Smith, Appellant argues that Smith does not teach a substantially hour-glass shaped handle portion having a lower longitudinal portion of a first curved shape and a middle longitudinal portion of a second curved shape attached lengthwise to the lower longitudinal portion. App. Br. 28.

Appellant's argument is convincing. The Examiner correctly found, with reference to Appendix B of the Examiner's Answer, that Hollinger's handle comprises a lower longitudinal portion 102 of a first curved shape and a middle longitudinal portion 101 of a second curved shape attached lengthwise to the lower longitudinal portion. *See* discussion *supra*, with respect to the rejection of claim 7. The rejection of claims 10 and 40, however, is not based on Hollinger alone, but rather Hollinger in

combination with Heller, and more particularly, with Smith. As noted above, the Examiner's rejection proposes to substitute a handle portion as taught by Smith for the handle of Hollinger. We find that Smith's handle, while perhaps "substantially hour-glass shaped," does not comprise a lower portion having a first curved shape, and a middle portion having a second curved shape. *See* Smith, Figs. 1-3 and 5 (showing a lower tapered portion of square cross-section, an upper tapered portion of square cross-section, and an indented waist portion formed between the upper and lower portions). Thus, the modification of Hollinger's handle proposed by the Examiner will not result in a handle comprising a lower longitudinal portion of a first curved shape and a middle longitudinal portion of a second curved shape attached lengthwise to the lower longitudinal portion, as called for in claim 10, as well as claim 40, which depends from claim 10.

Conclusion

The teachings of Hollinger, Heller, and Smith, combined as proposed by the Examiner, do not render obvious a substantially hour-glass shaped handle portion having a lower longitudinal portion of a first curved shape and a middle longitudinal portion of a second curved shape attached lengthwise to the lower longitudinal portion, as called for in claim 10. We reverse the rejection.

DECISION

The Examiner's decision is affirmed as to claims 1-8, 10, 11, 15, 21-24, 27, 28, and 33-37, and reversed as to claims 12 and 38-40.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED-IN-PART

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